

**Delegated or Committee Planning Application Report and Report of handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle**

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<b>Reference No:</b>	17/02909/PP
<b>Planning Hierarchy:</b>	Local
<b>Applicant:</b>	Mr R Munn
<b>Proposal:</b>	Erection of dwellinghouse, formation of access and installation of septic tank and soakaway
<b>Site Address:</b>	Land Approx 82M South East of 13 Kilmaluag, Isle of Tiree, Argyll and Bute

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**SUPPLEMENTARY REPORT NO. 3**

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**1. INTRODUCTION**

Further to Supplementary Report No.2, Members will recall that further information in the form of a croft boundary plan, supporting statement with photographs and a croft management plan was received from the applicant in support of his planning application on Monday 15th April 2019. This was just two days prior to the committee date. This additional information raised new material planning considerations and issues which required further clarification, required the submission by the applicant of additional supporting information and evidence, and, following the receipt of such information, required careful and detailed assessment by officers. As such Members agreed, at the Meeting held on Wednesday 17<sup>th</sup> April, to continue the determination of this planning application to allow the planning authority to engage with the applicant and to obtain clarification on various matters in order to be able to come to a well-reasoned determination.

**2. UPDATE**

Consequently, the planning authority wrote to the applicant and separately to his agent on the 26<sup>th</sup> April 2019 under the provisions of Regulation 24 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013. These regulations provide that a planning authority may require from the applicant further particulars, documents, materials or evidence which they consider that they require to enable them to deal with the application.

The Regulation 24 letter informed the applicant and, separately, his agent that the Council cannot positively consider this planning application without the submission of the following additional details [quoted below from the Regulation 24 letters referred to]:

- i) The current status of the land to which the application relates having regard to its subdivision from the larger croft holding i.e. has it already been subdivided and, if not, when is this intended to be carried out? Have you engaged with the Crofting

Commission towards seeking their necessary approval for the subdivision of the existing larger croft? If so, what was the outcome and, if not, when do you intend to do this?

- ii) A plan showing the boundaries of the 1.0ha subdivided holding to which the submitted croft development plan relates;
- iii) Indicative details of the intended scale, location and nature of any additional infrastructure/buildings/polytunnels etc required for implementation of the croft business plan, specifically for: the growing of vegetables, the production of eggs, the production of milk, and any other buildings, structures and/or infrastructure;
- iv) Indicative details of the area(s) within the proposed subdivided croft within which you propose to plant the intended potatoes and organic vegetables;
- v) Indicative details of the area(s) within the proposed subdivided croft within which you propose to keep the poultry necessary for the production of eggs; and the number of birds you intend to keep;
- vi) Written details of where, within the subdivided croft, you intend to graze and over-winter the dairy cattle necessary for the production of milk; and how many cattle you propose;
- vii) An updated crofting business plan to include the proposed milk production (no details of this are included within the business plan previously provided).

The applicant and/or his agent was given two weeks from the date of this letter to either submit the required additional information or else to agree with the planning authority, within that same two week period, a revised timescale for doing so.

The Regulation 24 letter informed the applicant and his agent that in the event that the requested information is not submitted within the agreed time period (or any extended period so agreed), that it would be the intention of the planning authority to recommend refusal of the application on the basis of lack of necessary information.

The two week period referred to expired on the 10<sup>th</sup> May 2019 and it is confirmed that despite follow up requests being issued on 22<sup>nd</sup> May, 27<sup>th</sup> June, and 3<sup>rd</sup> September there has been no response to this request for further information to date.

It is therefore the recommendation of officers that an additional reason for refusal of this application be added to the two refusal reasons as tabled within the original report of handling and that the numbering of the refusal reasons be amended to reflect the adjusted hierarchy of the recommendation. This additional refusal reason and the amended ordering of the resulting three reasons for refusal is specified within the 'recommendation' section of this report below.

### **Historic Environment Assessment Update**

Members will also recall that, originally, planning permission was recommended for refusal for two reasons. The first being because the proposed development would have a materially harmful and unacceptable impact upon the historic environment, including the setting of the adjacent Category A listed building and upon the character and quality of the conservation area. The second being because the proposed development would, due to its inappropriate design, detailing, orientation and location, have an unacceptable and materially harmful impact upon its immediate landscape and, in particular, the built-landscape which comprises a key component of Tiree's unique and special character.

Whilst officers have been pursuing the submission of additional information from the applicant and/or his agent, this opportunity has been used to consult with the Council's Design and Conservation Officer on the proposals. Such consultation was not previously possible as the conservation officer was absent on maternity leave.

This consultation response supports the officer's original assessment and recommendation that this planning application be refused. A summary of this recent consultation response (dated 25<sup>th</sup> October 2019) is reproduced below:

## **SITING**

### **Impact on Setting of Listed Building and Conservation Area:**

The applicant's supporting statement says that "*The siting of the house was chosen to keep any visual impact to a minimum. The high rocky outcrop to the west means that the house will not be visible from the west. The house will be visible from the B8068 on the east but the impact will be lessened greatly as the house will blend into the black cloak of the high rocky ridge behind it on the west. This also ensures the house will not skyline*".

This argument has been carefully considered and it is concluded that whilst the proposed new dwellinghouse and the existing listed building, 13 Kilmoluaig, may not be immediately visible to and from each other, the "setting" of the listed building encompasses significantly more than simply views directly between the existing and the proposed building.

Scottish Planning Policy (SPP) defines setting as being "*more than the immediate surroundings of a site or building, and may be related to the function or use of a place, or how it was intended to fit into the landscape or townscape, the view from it or how it is seen from areas round about, or areas that are important to the protection of the place, site or building*". In directly relevant recent case law from England (Kedleston Hall, Derbyshire 2016) the Court found that the inspector had taken an unlawfully narrow approach to the question of "setting", focusing on a simple visual connection rather than the historic, social and economic connections.

In this case, as 13 Kilmoluaig was the original croft house and the current application site was part of its related and immediate croft land, then they have a historic and economic connection in terms of the original function and use of the croft house and how it was intended to sit within the landscape, regardless of what is visible to or from it.

In further support of this argument, Historic Environment Scotland (HES) has commented that the setting of the A-listed 13 Kilmoluaig is characterised by its relatively isolated location and that the current proposal for the erection of a new dwellinghouse would have a significant negative impact on the way that this early 19<sup>th</sup> Century cottage is understood and experienced within its landscape setting. Whilst HES did use the word "views" within their full comments, the Council's conservation officer considers that the key part of their comments to focus on is how 13 Kilmoluaig is *experienced* within its wider landscape setting, rather than simply viewed, and that if one begins to walk a short distance from the listed building then finds themselves close to the curtilage of a modern dwelling, this would, in the considered professional opinion of the Council's Design and Conservation officer, would have a significant and negative impact on the experience of the listed building's setting.

The Council's Design and Conservation officer therefore concludes on this point that, in her opinion, the proposal is contrary to policy LDP SG ENV 16 (a) which requires that developments preserve the setting of a listed building.

In addition and notwithstanding the fact that 13 Kilmoluaig is listed, the Council's Design and Conservation officer is of the opinion that the wider conservation area settlement of

Kilmoluaig is generally characterised as having a strong grid pattern of enclosed fields overlaying a broad gently undulating open landscape and dwellinghouses within this wider landscape are well-spaced apart. This existing predominant settlement pattern echoes the Isle of Tiree design guidance which refers to “a low density, dispersed pattern of development” and the proposed development is considered contrary to both LDP SG ENV 17 and to policy LDP 3 (Supporting the protection, conservation and enhancement of our environment) which requires that proposed development protects, conserves or, where possible, enhances the established character of the built environment in terms of its location, scale, form and design, and also that it avoids adverse effects, including cumulative effects, on the integrity or special qualities of international or nationally designated natural and built environment sites. The proposal is also considered by the Council’s conservation officer to be contrary to policy LDP 9 (Development Setting, Layout and Design) which requires development to be sited and positioned so as to pay regard to the context within which it is located.

### **Orientation and Access:**

A report published by the Island’s Historical centre, An Iodhlann, in 2004 entitled “Winds of Change” states that “traditionally Tiree houses face east”. This can be seen from the orientation of 13 Kilmoluaig. Moving away from this historic orientation pattern would again be contrary to policies LDP 3, LDP 9 and LDP SG ENV 17. Similarly, the incorporation of an access driveway would create an inappropriate “urban approach to parking” (as outlined in Isle of Tiree Design Guidance) which would again be contrary to these policies.

### **DESIGN**

The proposed large, modern t-shaped plan is inappropriate for Tiree and the scale does not consider the scale of nearby buildings (i.e. 13 Kilmoluaig). This is contrary to the advice provided in national guidance – Historic Environment Scotland “New design in historic settings” which states that new design should consider the surrounding scale, hierarchy and massing of the existing built form.

Furthermore the proposed use of materials is not suitable for this location. HES’s “New design in historic settings” states that “The sensitive use of appropriate colour, texture and pattern of materials, whether traditional or contemporary is also important. Their use and detailing, particularly near to open landscapes, is crucial in making a development stand out or blend in.”

These aspects of design are therefore contrary to policies LDP 3, LDP 9, LDP SG ENV 17 and LDP SG ENV 16 (a).

### **3. RECOMMENDATION:**

Given the lack of engagement from the applicant or his agent, neither officers nor Members are able to properly assess or consider any claim of overriding locational/operational need for a dwellinghouse of this specific design and orientation and in this specific location.

This stated claim of ‘crofting need’ is central to the Applicant’s proposal but has not been appropriately demonstrated or substantiated despite several written requests for information over a prolonged time period.

Therefore, officers remain of the considered opinion that the proposed development is unacceptable due to its materially harmful impact upon the setting of the adjacent Category A listed building; due to its negative impact upon the character and quality of the

Kilmoluaig Conservation area; and due to its unacceptably harmful impact upon the special characteristics of Tiree's natural and built landscape.

It is therefore recommended that Members refuse this planning application for the amended and resequenced reasons below:

1. Insufficient information has been submitted to allow a competent assessment of the applicant's claimed locational/operational need for the development and, in particular, the applicant's stated claim that the proposed development within this specific location and of this precise form is required in order to support a proposed and/or existing agricultural activity upon what is claimed to be a bareland croft. The planning authority have required the submission of additional necessary details by letter dated 26<sup>th</sup> April 2019 and issued under the provisions of Regulation 24 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013, and have repeated this request for information by subsequent written communication dated 22<sup>nd</sup> May 2019, 27<sup>th</sup> June 2019 and 3<sup>rd</sup> September 2019.

No response has been forthcoming to any of these requests for information and in the absence of essential information upon which to make a competent assessment, the Planning Authority must refuse this planning application.

2. Notwithstanding Reason 1 above, the proposed development would have a materially harmful and unacceptable impact upon the historic environment including the setting of the adjacent Category A listed building and upon the character and quality of the conservation area.

The proximity of the proposed dwellinghouse and its associated access roadway to the listed building along with its modern design creates an uncomfortable relationship between them. At present the listed building currently enjoys a prime position, located slightly offset atop a rocky hillock, which has open outward views and which is free from development around its periphery. This area of open elevated and rural character contributes to the setting of the listed building, both on inward and outward views, and development of this site would erode the sense of space and openness which it currently enjoys, compromising its visual prominence and devaluing its historical value. The listed building is a key landscape feature and the proposed development would adversely affect the way the listed building is appreciated and experienced in the landscape, diminishing its visual significance by visually intruding into the visual prominence and exclusivity the building currently enjoys.

Kilmoluaig Conservation Area has been designated due to its traditional settlement pattern and orientation of the buildings within it, together with the presence of historically important thatched cottages which are also listed due to their unique physical characteristics.

This is not an acceptable site for development in terms of the council's settlement strategy as expressed through policy LDP DM 1 as well as being contrary to the provisions of Policy LDP 3 and associated Supplementary Guidance SG LDP ENV 16(a) and SG LDP ENV 17 of the LDP as well as SPP and the Historic Environment Scotland Policy Statement 2016 and Historic Environment Scotland Managing Change: Setting, New Design in Historic Settings (Historic Scotland) which presume against development that detrimentally affects the setting of listed buildings and the quality and special character of conservation areas.

3. Notwithstanding Reasons 1 and 2 above, it is considered that the proposed development would, due to its inappropriate design, detailing, orientation and location, have an unacceptable and materially harmful impact upon its immediate landscape

and, in particular, the built-landscape which comprises a key component of Tiree's unique and special character.

The proposed development fails to respect the specific settlement pattern, local distinctiveness and built-form of this part of Kilmaluag as recognised within the Council's 'Isle of Tiree Sustainable Design Guidance' or the 'Island of Tiree: Landscape Capacity Study for New Housing' (Final Report, published May 2006)', and as underpinned by the inclusion of this site within the Kilmaluag Conservation Area.

The development consists of a relatively large three-bedroomed 'T-shaped' detached bungalow of largely unimaginative design and materials and which does not properly capture the essence of Tiree's unique and special design character. This impression is materially heightened when considering the context of the proposed development and its siting within the immediate setting of the important traditional Tiree "blacktop" building and within the Kilmaluag Conservation Area, as expressed within refusal reason 1 above. Specifically, the proposed development is considered unacceptable for the following reasons:

- The orientation of the proposed dwellinghouse would be perpendicular to the listed building 13 Kilmaluag and to the majority of the existing buildings within the wider landscape. This is contrary to the traditional settlement pattern of this part of Tiree and will result in a development which will appear unduly prominent, particularly when experienced from the immediate setting of the listed building.
- The modern 'T-shaped' plan of the proposed dwellinghouse would result in a development which would have a scale and massing inconsistent with its setting and with the local distinctiveness of this part of the Island and which would erode the typical, simple proportions of the area in general and the Category A listed building in particular, namely a long, low, narrow building with a simple plan form.
- The proposed development does not retain the traditional window and wall relationships which form an important part of the unique character of Tiree's built environment. In addition, the proposed dwellinghouse incorporates uPVC windows and doors of a design and quality which are not considered appropriate within this part of the conservation area or that they pay sufficient regard to the traditional window and door detailing of the nearby listed building.

In addition, the site of the proposed development falls within the 'North Tiree Study Area' as identified within the Council's published "Island of Tiree: Landscape Capacity Study for New Housing" (Final Report, published May 2006), which recognises that the site the subject of this application is located within an area of distinct landscape and visual character which the Study describes as 'Extensive Crofting' which consists of some limited opportunities for development which reflects the dispersed spacing and distinct relationship of existing settlement with the crofting inbye land. The Study states that new development should be set one field distance from the public road and a minimum of one field (no less than 100 metres) apart from existing croft houses. The study recommends that new development should be oriented facing a road and usually on a NE/SW axis where this predominates. Similarly, the Study states that where a distinct alignment of existing houses occurs, new development should be sited to fit with this. The Study also states that additional overhead lines and access tracks should be avoided.

In the case of the proposed development, the new dwellinghouse would be located more than 100 metres from the public road but less than 100 metres from the

nearest croft house (the listed building 13 Kilmaluaig). The proposed development would be located approximately 80 metres to the south east of the listed building at its closest point (building to building) and within the existing field which includes 13 Kilmaluaig at its northern boundary. In addition, the proposed development includes a significant length of proposed new access track; approximately 120 metres in length and cutting across the field which is currently solely occupied by the listed building.

In addition, the proposed development would be oriented upon a broadly east to west axis and does not reflect the existing settlement pattern which consists of buildings located upon a distinct NE/SW axis, this being a specific part of the established and distinctive character of the area.

It is therefore considered that the proposed development would not sufficiently maintain the existing dispersed, low density settlement pattern of this part of Tiree or its distinctive NE/SW orientation of buildings and would involve the construction of a substantial new access trackway.

The proposed development is therefore considered contrary to the identified constraints and opportunities for new development as described within the “Island of Tiree: Landscape Capacity Study for New Housing” and contrary to Policy LDP 3, Supplementary Guidance SG LDP ENV 14, the Isle of Tiree Sustainable Design Guidance and the Sustainable Siting and Design Principles of the LDP.

**Author of Report:** Andrew Barrie  
**Reviewing Officer:** Tim Williams

**Date:** 1<sup>st</sup> November 2019  
**Date:** 5<sup>th</sup> November 2019

**Fergus Murray**  
**Head of Development and Economic Growth**